

**DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

WAIVER OF SERVICE OF SUMMONS

RE: Caption of Action: *Nanya Technology Corp. v. Fujitsu Limited et al.*
Case Number: **06-25**

TO: **Fujitsu Microelectronics America, Inc.**
(Name of Plaintiff's Attorney or Unrepresented Plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action stated above, which was filed in the United States District Court for the District of Guam. I have also received a copy of the complaint in the action, two copies of this Instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after the date the request was sent, which was October 16, 2006, or within 90 days after that date if the request was sent outside the United States.

Date

Signature

Printed/Typed Name

For Defendant

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving costs of service of the summons and complaint. A defendant located in the United States who after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the Court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the Court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received. ..

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**DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

Nanya Technology Corp.,

Plaintiff,

vs.

Fujitsu Limited, et al.,

Defendants.

Civil Case No. 1:06-cv-00025

SCHEDULING NOTICE

Joseph C. Razzano
Suite 2A, 130 Aspinall Avenue
Hagatna, GU 96910

John S. Unpingco
Suite 12B, Sinajana Mall
Sinajana, GU 96910

The Local Rules establish procedures for complying with Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure. Counsel should study the Local Rules before attempting to process cases in this Court.

Pursuant to Local Rules 16.1 and 16.2, it is hereby ORDERED that:

1. Counsel of record and all pro se litigants that have appeared in the case must meet and confer, within fifteen (15) days after receipt of this Notice, but no later than sixty (60) days after the filing of the complaint, prior to commencing discovery.
2. A proposed Scheduling Order and a proposed Discovery Plan shall be lodged on or before 11/27/2006. Careful and immediate attention should be given to the directions in Local Rules 16.1 and 16.2 to ensure complete and timely compliance with Federal Rules 16(b) and 26(f), and the Local Rules.
3. Counsel for the plaintiff, or if the plaintiff is pro se, then the pro se plaintiff, must take the lead in the preparation of the Scheduling Order. If a defendant is not contacted by a pro se plaintiff within the required time frame, the defendant's counsel shall contact the

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pro se plaintiff and arrange a meeting to comply with this Rule in the appropriate time frame. The failure of a party or its counsel to participate in good faith in the framing of a Scheduling Order may result in the imposition of sanctions.

4. Counsel of record and all pro se litigants that have appeared in the case are jointly responsible for submitting a Proposed Discovery Plan to the Court.

5. A Scheduling Conference shall be held on **Tuesday, December 12, 2006 at 10:00 AM in the 3rd Floor Chambers.**

6. Counsel are reminded that:

- a) The filing of motions does not postpone discovery.
- b) Local Rule 37.1 governs discovery disputes and motions.
- c) The number and form of interrogatories are governed by Local Rule 33.1.
- d) Discovery documents and certificates of service shall not be filed with the Clerk until there is a proceeding in which the document or proof of service is in issue.

Dated: October 12, 2006

/s/ Mary L.M. Moran
Clerk of Court

EXHIBIT B

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Attorneys for Plaintiffs,
FUJITSU LIMITED and
FUJITSU MICROELECTRONICS AMERICA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FUJITSU LIMITED, a Japanese
corporation, and FUJITSU
MICROELECTRONICS AMERICA,
INC., a California corporation,

Plaintiffs,

v.

NANYA TECHNOLOGY CORP., a
Taiwanese corporation, and NANYA
TECHNOLOGY CORP. U.S.A., a
California corporation,

Defendants.

CASE NO. CV-06-

COMPLAINT FOR PATENT
INFRINGEMENT AND
DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

E-FILING

ADR

ORIGINAL
FILED

OCT 24 2006

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

C06 06613 EDL

COMPLAINT

1 Plaintiff Fujitsu Limited ("Fujitsu") and Fujitsu Microelectronics
2 America, Inc. ("Fujitsu America") (collectively, "Plaintiffs"), for their complaint
3 against Defendants Nanya Technology Corp. ("Nanya") and Nanya Technology
4 Corp. U.S.A. ("Nanya USA") (collectively, "Defendants"), aver as follows:

5 **THE PARTIES**

6 1. Fujitsu is a corporation organized and existing under the laws
7 of Japan. Fujitsu is a leading researcher, designer, manufacturer, and provider of
8 information technology and communications products and services. As a result of
9 its innovation, Fujitsu has been awarded various patents relating to computer
10 memory products such as double-data-rate synchronous dynamic random access
11 memory (DDR SDRAM) chips.

12 2. Fujitsu America is a wholly owned subsidiary of Fujitsu, and is
13 a California corporation with headquarters and principal place of business at 1250
14 E. Arques Avenue, M/S 333, Sunnyvale, California 94088-3470.

15 3. Defendant Nanya is a corporation organized and existing under
16 the laws of Taiwan, having its principal place of business at Hwa-Ya Technology
17 Park 669, Fu Hsing 3rd Rd., Kueishan, Taoyuan, Taiwan, Republic of China.
18 Upon information and belief, Nanya manufactures products, including the memory
19 chips accused of infringement in this Complaint, for sale and importation into the
20 United States directly through its own actions and indirectly by Defendant Nanya
21 USA.

22 4. Defendant Nanya USA is a corporation organized and existing
23 under the laws of the State of California, having its principal place of business at
24 675 East Brokaw Road, San Jose, CA 95112. Upon information and belief, Nanya
25 USA is a wholly-owned subsidiary of Defendant Nanya, and has sold or sells
26 products manufactured by Nanya or Nanya USA, including the memory chips
27 accused of infringement in this Complaint, to customers in the State of California
28 and elsewhere in the United States. Upon further information and belief, the

1 accused memory chips are incorporated by customers of Nanya or Nanya USA,
2 who are manufacturers of computers and other electronic devices, into computers
3 and other electronic devices sold in the State of California, including customers
4 located in this judicial district.

5 JURISDICTION

6 5. This is an action arising under the Patent Laws of the United
7 States, Title 35 of the United States Code and the Declaratory Relief Act. This
8 Court has subject matter jurisdiction over this action under 28 U.S.C. § 1338(a),
9 which confers jurisdiction over cases of patent infringement, 28 U.S.C. § 1331,
10 which confers federal question jurisdiction and 28 U.S.C. § 2201(a), which confers
11 jurisdiction over declaratory judgment actions.

12 6. This Court has general personal jurisdiction over Nanya USA
13 because Nanya USA is incorporated under the laws of the State of California and
14 has its principal place of business in San Jose, California.

15 7. This Court has personal jurisdiction over Nanya and Nanya
16 USA under California Code of Civil Procedure § 410.10, *inter alia*, on the basis
17 that upon information and belief, Nanya and Nanya USA have sold, and continue
18 to sell infringing memory chips to manufacturers of computers and other electronic
19 devices in this District and elsewhere in the United States, who in turn have sold
20 and continue to sell computers and other electronic devices containing the
21 infringing memory chips to customers in this District and elsewhere in the United
22 States. Upon further information and belief, Nanya, as 100% owner of Nanya
23 USA, has been directing Nanya USA's sales activities. Upon information and
24 belief, Nanya also knew that said manufacturers of computers and other electronic
25 devices reside in this District and elsewhere in the United States, and would sell
26 devices containing the infringing memory chips to customers in this District and
27 elsewhere in the United States, and Nanya derived and continues to derive
28 substantial revenue therefrom.

VENUE

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

INTRADISTRICT ASSIGNMENT

9. Pursuant to Civil L.R. 3-2(c) and (e), the San Jose Division is the proper division to be assigned this action, based on Nanya USA's residence in Santa Clara County as well as Nanya and Nanya USA's infringing activities in Santa Clara County.

FUJITSU'S PATENTS

10. Fujitsu is the assignee and owner of the following United States patents ("Fujitsu's Patents"):

- a. U.S. Patent No. 4,801,989 ("the '989 patent", Exh. A hereto), entitled "Dynamic Random Access Memory Having Trench Capacitor With Polysilicon Lined Lower Electrode," which was duly and legally issued on January 31, 1989 to Masao Taguchi;
- b. U.S. Patent No. 6,104,486 ("the '486 patent", Exh. B hereto), entitled "Fabrication Process of a Semiconductor Device Using Ellipsometry," which was duly and legally issued on August 15, 2000 to Hiroshi Arimoto.
- c. U.S. Patent No. 6,292,428 B1 ("the '428 patent", Exh. C hereto), entitled "Semiconductor Device Reconciling Different Timing Signals," which was duly and legally issued on September 18, 2001 to Hiroshi Tomita and Tatsuya Kanda.
- d. U.S. Patent No. 6,320,819 B2 ("the '819 patent", Exh. D hereto), entitled "Semiconductor Device Reconciling Different Timing Signals," which was duly and legally issued on November 20, 2001 to Hiroshi Tomita and Tatsuya Kanda.

NANYA'S PATENTS

11. In a complaint filed by Nanya against Plaintiffs in Guam on September 13, 2006 (but not yet served), Civil Case No. 06-00025 ("the Guam Complaint"), Nanya purported to be the owner of all rights, title, and interest in and under the following United States patents ("Nanya's Patents"):

- a. U.S. Patent No. 6,790,765 ("the '765 patent", Exh. E hereto), titled "Method For Forming Contact";
- b. U.S. Patent No. 6,225,187 ("the '187 patent", Exh. F hereto), entitled "Method For STI-Top Rounding Control";
- c. U.S. Patent No. 6,426,271 ("the '271 patent", Exh. G hereto), entitled "Method Of Rounding The Corner Of A Shallow Trench Isolation Region."

12. The Guam Complaint asserts Nanya's Patents against Plaintiffs.

13. By virtue of Nanya's actions, Plaintiffs reasonably believe that Nanya imminently intends to pursue against them an infringement action involving Nanya's Patents.

14. Plaintiffs deny that they infringe any valid claim of any of the Nanya Patents.

15. An actual and justiciable controversy exists between Nanya and Plaintiffs concerning whether Plaintiffs infringe any valid claim of the Nanya Patents. Plaintiffs now seek a declaratory judgment that they do not infringe any valid claim of the Nanya Patents, and that the claims of the Nanya Patents are invalid.

FIRST CLAIM FOR RELIEF

(Infringement of the '989 Patent)

16. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-10 of this Complaint.

1 17. Nanya and Nanya USA have been and still are infringing one or
2 more claims of the '989 patent by making, using, offering for sale, selling and/or
3 importing into the United States memory chips and by causing use, offer for sale
4 and sale of computers and other electronic devices containing memory chips.
5 Infringing memory chips made, used, sold, offered for sale or imported by Nanya
6 and Nanya USA include at least Nanya's 256M DDR SDRAM (e.g., part no.
7 NT5D64M4AT). On information and belief, there are additional infringing
8 memory chips.

9 18. Nanya and Nanya USA's actions constitute infringement, active
10 inducement of infringement, and/or contributory infringement of the '989 patent in
11 violation of 35 U.S.C. § 271.

12 19. Fujitsu has sustained damages and will continue to sustain
13 damages as a result of the aforesaid acts of infringement.

14 20. Nanya and Nanya USA's continued infringement of the '989
15 patent has caused and will continue to cause Fujitsu irreparable harm unless
16 enjoined by the Court.

17 21. On information and belief, Nanya and Nanya USA's
18 infringements of the '989 patent have been willful.

19 **SECOND CLAIM FOR RELIEF**

20 **(Infringement of the '486 Patent)**

21 22. Plaintiffs re-allege and incorporate by reference herein each of
22 the averments set forth in paragraphs 1-10 of this Complaint.

23 23. Nanya and Nanya USA have been and still are infringing one or
24 more claims of the '486 patent by making, using, offering for sale, selling and/or
25 importing into the United States memory chips and by causing use, offer for sale
26 and sale of computers and other electronic devices containing memory chips.
27 Upon information and belief, infringing memory chips made, used, sold, offered
28 for sale or imported by Nanya and Nanya USA include at least the following:

1 512M DDR SDRAM; 512M DDR2 SDRAM; 256M DDR2 SDRAM; 1G DDR2
 2 SDRAM; and SDRAM memory module products equipped with one or more of
 3 the 512M DDR SDRAM; 512M DDR2 SDRAM; 256M DDR2 SDRAM; and 1G
 4 DDR2 SDRAM .

5 24. Nanya and Nanya USA's actions constitute infringement, active
 6 inducement of infringement, and/or contributory infringement of the '486 patent in
 7 violation of 35 U.S.C. § 271.

8 25. Fujitsu has sustained damages and will continue to sustain
 9 damages as a result of the aforesaid acts of infringement.

10 26. Nanya and Nanya USA's continued infringement of the '486
 11 patent has caused and will continue to cause Fujitsu irreparable harm unless
 12 enjoined by the Court.

13 27. On information and belief, Nanya and Nanya USA's
 14 infringements of the '486 patent have been willful.

15 **THIRD CLAIM FOR RELIEF**

16 **(Infringement of the '428 Patent)**

17 28. Plaintiffs re-allege and incorporate by reference herein each of
 18 the averments set forth in paragraphs 1-10 of this Complaint.

19 29. Nanya and Nanya USA have been and still are infringing one or
 20 more claims of the '428 patent by making, using, offering for sale, selling and/or
 21 importing into the United States memory chips and causing use, offer for sale and
 22 sale of computers and other electronic devices containing memory chips.
 23 Infringing memory chips made, used, sold, offered for sale or imported by Nanya
 24 and Nanya USA include at least the 256M DDR SDRAM (e.g., part no.
 25 NT5D64M4AT). On information and belief, Defendants' additional infringing
 26 memory chips include at least the following: 128M DDR SDRAM; 512M DDR
 27 SDRAM; 512M DDR2 SDRAM; 1G DDR2 SDRAM; 128M DDR SDRAM
 28 Graphic (Elixir); 512M DDR SDRAM Graphic (Elixir); 256M DDR2 SDRAM

1 Graphic (Elixir); 512M DDR2 SDRAM Graphic (Elixir); 512M DDR UDIMM;
 2 1G DDR UDIMM; 512M DDR SODIMM; 1G DDR SODIMM; 512M DDR
 3 RDIMM; 1G DDR RDIMM; 2G DDR RDIMM; 256M DDR2 UDIMM; 512M
 4 DDR2 UDIMM; 1G DDR2 UDIMM; 2G DDR2 UDIMM; 256M DDR2
 5 SODIMM; 512M DDR2 SODIMM; 1G DDR2 SODIMM; 512M DDR2 RDIMM;
 6 1G DDR2 RDIMM; 2G DDR2 RDIMM; 512M DDR2 FBDIMM; 1G DDR2
 7 FBDIMM; 2G DDR2 FBDIMM; 512M DDR SDRAM SODIMM (Elixir); 128M
 8 DDR SDRAM Unbuffered DIMM (Elixir); 512M DDR SDRAM Unbuffered
 9 DIMM (Elixir); 1G DDR SDRAM Unbuffered DIMM (Elixir); 256M DDR2
 10 SDRAM SO DIMM (Elixir); 512M DDR2 SDRAM SO DIMM (Elixir); 1G DDR2
 11 SDRAM SO DIMM (Elixir); 256M DDR2 SDRAM Unbuffered DIMM (Elixir);
 12 512M DDR2 SDRAM Unbuffered DIMM (Elixir); 1G DDR2 SDRAM
 13 Unbuffered DIMM (Elixir); 512M DDR SDRAM SO DIMM (Super Elixir); 1G
 14 DDR SDRAM SO DIMM (Super Elixir); 128M DDR SDRAM Unbuffered DIMM
 15 (Super Elixir); 512M DDR SDRAM Unbuffered DIMM (Super Elixir); 1G DDR
 16 SDRAM Unbuffered DIMM (Super Elixir); 256M DDR2 SDRAM SO DIMM
 17 (Super Elixir); 512M DDR2 SDRAM SO DIMM (Super Elixir); 1G DDR2
 18 SDRAM SO DIMM (Super Elixir); 256M DDR2 SDRAM Unbuffered DIMM
 19 (Super Elixir); 512M DDR2 SDRAM Unbuffered DIMM (Super Elixir); and 1G
 20 DDR2 SDRAM Unbuffered DIMM (Super Elixir).

21 30. Nanya and Nanya USA's actions constitute infringement, active
 22 inducement of infringement, and/or contributory infringement of the '428 patent in
 23 violation of 35 U.S.C. § 271.

24 31. Fujitsu has sustained damages and will continue to sustain
 25 damages as a result of the aforesaid acts of infringement.

26 32. Nanya and Nanya USA's continued infringement of the '428
 27 patent has caused and will continue to cause Fujitsu irreparable harm unless
 28 enjoined by the Court.

1 33. On information and belief, Nanya and Nanya USA's
2 infringements of the '428 patent have been willful.

3 **FOURTH CLAIM FOR RELIEF**

4 **(Infringement of the '819 Patent)**

5 34. Plaintiffs re-allege and incorporate by reference herein each of
6 the averments set forth in paragraphs 1-10 of this Complaint.

7 35. Nanya and Nanya USA have been and still are infringing one or
8 more claims of the '819 patent by making, using, offering for sale, selling and/or
9 importing into the United States memory chips and causing use, offer for sale and
10 sale of computers and other electronic devices containing memory chips.

11 Infringing memory chips made, used, sold, offered for sale or imported by Nanya
12 and Nanya USA include at least the 256M DDR SDRAM (e.g., part no.
13 NT5D64M4AT). On information and belief, Defendants' additional infringing
14 memory chips include at least the following: 128M DDR SDRAM; 512M DDR
15 SDRAM; 512M DDR2 SDRAM; 1G DDR2 SDRAM; 128M DDR SDRAM
16 Graphic (Elixir); 512M DDR SDRAM Graphic (Elixir); 256M DDR2 SDRAM
17 Graphic (Elixir); 512M DDR2 SDRAM Graphic (Elixir); 512M DDR UDIMM;
18 1G DDR UDIMM; 512M DDR SODIMM; 1G DDR SODIMM; 512M DDR
19 RDIMM; 1G DDR RDIMM; 2G DDR RDIMM; 256M DDR2 UDIMM; 512M
20 DDR2 UDIMM; 1G DDR2 UDIMM; 2G DDR2 UDIMM; 256M DDR2
21 SODIMM; 512M DDR2 SODIMM; 1G DDR2 SODIMM; 512M DDR2 RDIMM;
22 1G DDR2 RDIMM; 2G DDR2 RDIMM; 512M DDR2 FBDIMM; 1G DDR2
23 FBDIMM; 2G DDR2 FBDIMM; 512M DDR SDRAM SODIMM (Elixir); 128M
24 DDR SDRAM Unbuffered DIMM (Elixir); 512M DDR SDRAM Unbuffered
25 DIMM (Elixir); 1G DDR SDRAM Unbuffered DIMM (Elixir); 256M DDR2
26 SDRAM SO DIMM (Elixir); 512M DDR2 SDRAM SO DIMM (Elixir); 1G DDR2
27 SDRAM SO DIMM (Elixir); 256M DDR2 SDRAM Unbuffered DIMM (Elixir);
28 512M DDR2 SDRAM Unbuffered DIMM (Elixir); 1G DDR2 SDRAM

1 Unbuffered DIMM (Elixir); 512M DDR SDRAM SO DIMM (Super Elixir); 1G
2 DDR SDRAM SO DIMM (Super Elixir); 128M DDR SDRAM Unbuffered DIMM
3 (Super Elixir); 512M DDR SDRAM Unbuffered DIMM (Super Elixir); 1G DDR
4 SDRAM Unbuffered DIMM (Super Elixir); 256M DDR2 SDRAM SO DIMM
5 (Super Elixir); 512M DDR2 SDRAM SO DIMM (Super Elixir); 1G DDR2
6 SDRAM SO DIMM (Super Elixir); 256M DDR2 SDRAM Unbuffered DIMM
7 (Super Elixir); 512M DDR2 SDRAM Unbuffered DIMM (Super Elixir); and 1G
8 DDR2 SDRAM Unbuffered DIMM (Super Elixir).

9 36. Nanya and Nanya USA's actions constitute infringement, active
10 inducement of infringement, and/or contributory infringement of the '819 patent in
11 violation of 35 U.S.C. § 271.

12 37. Fujitsu has sustained damages and will continue to sustain
13 damages as a result of the aforesaid acts of infringement.

14 38. Nanya and Nanya USA's continued infringement of the '819
15 patent has caused and will continue to cause Fujitsu irreparable harm unless
16 enjoined by the Court.

17 39. On information and belief, Nanya and Nanya USA's
18 infringements of the '819 patent have been willful.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Declaratory Judgment of Noninfringement regarding the '765 Patent)**

21 40. Plaintiffs re-allege and incorporate by reference herein each of
22 the averments set forth in paragraphs 1-15 of this Complaint.

23 41. Plaintiffs are not directly infringing, contributorily infringing,
24 or actively inducing others to infringe any valid claim of the '765 patent as
25 properly construed.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity regarding the '765 Patent)

42. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

43. The '765 patent is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

SEVENTH CLAIM FOR RELIEF

(Declaratory Judgment of Noninfringement regarding the '187 patent)

44. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

45. Plaintiffs are not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '187 patent as properly construed.

EIGHTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity regarding the '187 patent)

46. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

47. The '187 patent is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

NINTH CLAIM FOR RELIEF

(Declaratory Judgment of Noninfringement regarding the '271 patent)

48. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

49. Plaintiffs are not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '271 patent as properly construed.

TENTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity regarding the '271 patent)

50. Plaintiffs re-allege and incorporate by reference herein each of the averments set forth in paragraphs 1-15 of this Complaint.

51. The '271 patent is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including but not limited to sections 102, 103, and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that this Court enter judgment in its favor and against Defendants and grant the following relief:

A. A preliminary and permanent injunction preventing further infringement, contributory infringement and inducement of infringement of Fujitsu's Patents;

B. An accounting to determine damages for infringement;

C. An award of damages for infringement;

D. An assessment and award of interest, including pre-judgment interest, on the damages determined;

E. A trebling of those damages pursuant to 35 U.S.C. § 284;

F. A declaration that Plaintiffs do not infringe any valid claim of any of the Nanya Patents.

G. A declaration that the claims of the Nanya Patents asserted against Plaintiffs are invalid.

H. A finding that this is an exceptional case and an award of Plaintiffs' costs and attorney fees; and

I. Such other and further relief as this Court deems just and proper.

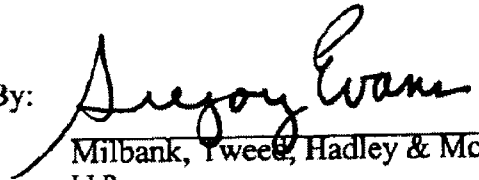
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims and all issues properly triable thereby.

Respectfully submitted,

Dated: October 23, 2006

By:



Milbank, Tweed, Hadley & McCloy
LLP

Gregory Evans (State Bar No.
147623)

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Attorneys for Plaintiffs
FUJITSU LIMITED and
FUJITSU MICROELECTRONICS
AMERICA, INC.

LAL: #6334633

JS-44 - CANDO (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS

FUJITSU LIMITED, a Japanese Corporation, and FUJITSU MICROELECTRONICS AMERICA, INC., a California Corporation

DEFENDANTS

NANYA TECHNOLOGY CORP., a Taiwanese Corporation, and NANYA TECHNOLOGY CORP. U.S.A., a California Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

Japan

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gregory Evans, Milbank, Tweed, Hadley & McCloy LLP, 601 South Figueroa St., Los Angeles, CA 90017 (213) 892-4000

ATTORNEYS (IF KNOWN)

006 06613 EDL

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For diversity cases only)
- | | PTF | DEF | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Rescinded
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal in District Court from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Detained Shoppers' Leases (Excl. Veterans) <input type="checkbox"/> 160 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 170 Stockholders Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 190 Contract Product Liability <input type="checkbox"/> 196 Franchising	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 316 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 346 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 358 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 364 Personal Injury <input type="checkbox"/> 366 Personal Injury <input type="checkbox"/> 368 Personal Injury <input 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444 SSDI Title XVI <input type="checkbox"/> 445 RSI (406(g))	<input type="checkbox"/> 400 Ship Repositionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 420 Bankruptcy and Bankruptcy <input type="checkbox"/> 430 Commercial/CO Receivables <input type="checkbox"/> 440 Derivatives <input type="checkbox"/> 450 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 460 Selective Service <input type="checkbox"/> 470 Securities/Coincidental Securities <input type="checkbox"/> 475 Customer Challenge 12 USC 1418 <input type="checkbox"/> 481 Agricultural Act <input type="checkbox"/> 482 Economic Stabilization Act <input type="checkbox"/> 483 Environmental Matters <input type="checkbox"/> 484 Energy Allocation Act <input type="checkbox"/> 485 Freedom of Information Act <input type="checkbox"/> 490 Appeal of Fee Determination Under Equal Access to Justice Statutes <input type="checkbox"/> 495 Constitutionality of State Statutes <input type="checkbox"/> 500 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Title to Land <input type="checkbox"/> 246 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights <input type="checkbox"/> 448 Amer. of Disab. - Emp. <input type="checkbox"/> 449 Amer. of Disab. - Other <input type="checkbox"/> 450 Consumer Credit <input type="checkbox"/> 451 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 610 Motion to Vacate Sentence/Heard Corpus <input type="checkbox"/> 620 General <input type="checkbox"/> 630 Death Penalty <input type="checkbox"/> 640 Habeas Corpus & Other <input type="checkbox"/> 650 Civil Rights <input type="checkbox"/> 660 Prison Conditions	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Legislation <input type="checkbox"/> 761 Empl./Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 470 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 471 IRS - Third Party 28 USC 7602

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. Sec. 1331 (Federal Question); 28 U.S.C. Sec. 1338(a) (Patent Infringement); 28 U.S.C. Sec. 2201(a) (Declaratory Judgment), Action for Patent Infringement and Declaratory Judgment of Non-Infringement of Patents and/or Invalidity of Patents

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ YES ☐ NO

UNDER F.R.C.P. 23

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

October 23, 2006

SIGNATURE OF ATTORNEY OF RECORD

Gregory Evans

United States District Court
NORTHERN DISTRICT OF CALIFORNIA

FILING
ADR

FUJITSU LIMITED, and FUJITSU
MICROELECTRONICS AMERICA, INC.

SUMMONS IN A CIVIL CASE

CASE NUMBER:

C06 06613
EDL

V.

NANYA TECHNOLOGY CORP., and NANYA
TECHNOLOGY CORP. U.S.A.

TO: (Name and address of defendant)

NANYA TECHNOLOGY CORP. U.S.A.
675 East Brokaw Road
San Jose, CA 95112

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Christopher E. Chelsen, Esq.
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10017
(212) 530-5219 (facsimile)

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wierking
CLERK

DATE **OCT 4 2006**

[Signature]
(BY) DEPUTY CLERK

United States District Court **ADR**
NORTHERN DISTRICT OF CALIFORNIA

FUJITSU LIMITED, and FUJITSU
MICROELECTRONICS AMERICA, INC.

SUMMONS IN A CIVIL CASE
CASE NUMBER:

V.

NANYA TECHNOLOGY CORP., and NANYA
TECHNOLOGY CORP. U.S.A.

C06 06613

EDL

TO: (Name and address of defendant)

NANYA TECHNOLOGY CORP.
Hwa-Ya Technology Part 669
Fu Hsing 3rd Rd.
Kueishan, Taoyuan
Taiwan, Republic of China

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address).

Christopher E. Chelsen, Esq.
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10017
(212) 530-5219 (facsimile)

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wiekito
CLERK

OCT 24 2006

DATE

(BY) DEPUTY CLERK

EXHIBIT C

MILBANK, TWEED, HADLEY & McCLOY LLP

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October 11, 2006

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO RULE 408

BY FACSIMILE (214-593-9111)
CONFIRMATION VIA FEDERAL EXPRESS
Michael W. Shore, Esq.
Shore Chan Bragalone LLP
325 N. St. Paul Street
Suite 4450
Dallas, Texas 75201

Re: Fujitsu v. Nanya
Our Ref. 35068.02100

Dear Mr. Shore:

We are writing to you as counsel for Fujitsu Limited and are in receipt of your email letter of Sept. 19, 2006 addressed to Mr. Kitano. In the future, please address your communications regarding this matter to the undersigned.

Although Fujitsu appreciates your suggestion that the parties should work to reach an amicable settlement, Nanya's surprise filing of its complaint against Fujitsu in Guam in the middle of settlement discussions seems to contradict that approach. Moreover, by soliciting "settlement information" from Fujitsu during such discussions and then using that information in a publicly filed complaint, Nanya appears to have breached its express and implied confidentiality obligations to Fujitsu as well as misused the settlement procedures set up and supervised by the Tokyo District Court.

More particularly, the complaint Nanya filed against Fujitsu in Guam contains confidential Fujitsu settlement information relating to royalty rates, fees and selected patents that were disclosed to Nanya in confidence during the negotiations. Nanya and its attorneys had agreed in writing to keep such information confidential. (See the correspondence between Fujitsu and Nanya dated July 12, 2006.) This settlement information, which included Fujitsu trade secrets, thus should not have been disclosed to unspecified third parties through the filing of a complaint in federal court in the United States.

Michael W. Shore, Esq.
October 11, 2006
Page 2

As such, Fujitsu requests a detailed explanation describing Nanya's position on this breach, particularly in view of Fujitsu's sincere provision of this information in response to Nanya's letter dated August 10, in which Nanya claimed that the purpose of its request was "for advance preparation to make the meeting a meaningful one, which will solve global patent issues." We look forward to hearing your views on this point. Meanwhile, Fujitsu reserves its right to take action to redress these violations.

Reverting to your letter of September 19, we note that your letter makes a number of statements about U.S. patent law and litigation procedure that are simply incorrect.

For example, you assert that "Fujitsu must file any case on the patents listed in the Nanya Guam suit in Guam Federal District Court as counterclaims to the Nanya claims for declaratory judgment addressing those same patents." This statement, *inter alia*, ignores the very real possibility that the Guam case will be dismissed. Fujitsu has many options for proceeding, if it chooses to.

You also assert that "since Fujitsu has never identified any other patents as infringed by Nanya, any case filed in any other court based on other patents would violate Federal Rule of Civil Procedure 11 (which requires an adequate pre-suit investigation prior to filing)". This is a non-sequitor, and in any event is simply not the law. Rule 11 does not require that notice of individual patent investigations must be provided in advance to a potential defendant. Thus, you cannot conclude that merely because Fujitsu may not have notified Nanya of any particular infringement situation, that this would preclude such additional assertions at this time or in the future. We further note that Nanya did not provide advance notice to Fujitsu of the alleged infringement of the three Nanya patents identified in the Guam complaint. Thus, not only is your understanding of Rule 11 incorrect, you seem to believe that Rule 11 does not apply to Nanya.

You next assert that "any claims based upon patents not identified in the last 7 years of negotiations would be presumed barred under United States law by the doctrine of laches." This statement is also plainly incorrect. In order for laches to potentially apply to a particular Fujitsu infringement claim, there must be: (1) an unreasonable and inexcusable delay in bringing suit after Fujitsu knew or should have known about the infringing activities; and (2) material prejudice by Nanya as a result of the delay. We are unaware of any facts that could support such an argument.

Your comments about the alleged estoppel effect of the 1997 ITC action against Samsung seem to be based on a theory that a complainant in the ITC has an obligation to identify *all* infringing products by *all* potential respondents anywhere in the world. However, there is in fact no such requirement in the ITC. Thus, the fact that Fujitsu did not name Nanya as a respondent in the 1997 ITC action does not raise an estoppel issue for any present action against Nanya.

Concerning damages and marking issues, you argue that "since Fujitsu has not placed Nanya on notice that any other United States patents are infringed (other than those listed in the

Michael W. Shore, Esq.
October 11, 2006
Page 3

Guam suit), no past damages can be collected on any other patents, even assuming they are valid, enforceable and infringed." You further state that "Fujitsu has not marked its products with its patents identified to date, so again, no damages can be collected for past infringement on patents not yet identified." These statements are also incorrect. Actual notice to an infringer is required only under certain circumstances. For example, in the case of an apparatus claim, if the patent owner practices the invention and has failed to mark its products then actual notice may be required. However, patent marking requirements do not apply at all to method patents and do not apply to claims not practiced by the patent owner. Of course, marking and notice issues are not relevant to injunctive relief or to the collection of damages post-filing.

We hope this will serve as clarification of the points raised in your letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Chalsen', with a long horizontal flourish extending to the right.

Christopher E. Chalsen

cc: Mr. Shigeru Kitano
Michael M. Murray, Esq.

NY2:#4710247

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FACSIMILE TRANSMISSION

To: Michael W. Shore

Tel. Number:
Fax Number: 12145939111

From: Michael M. Murray

Tel. Number: (212) 530-5424
Fax Number: (212) 822-5424

Date/Time: Wednesday, October 11, 2006 8:59:46 PM

Number of Pages (including this cover page): 04
Contact Sender upon receipt: No

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